IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No.310 OF 2006.
Date of decision : 22.9.2006.

Ajaib Singh and others .....Appellants

versus

Baldev Singh .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.B.S.Jaswal, Advocate, for the appellants.

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**ORDER**

**HEMANT GUPTA, J. (oral)**

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, arising out the suit for possession by way of specific performance of an agreement to sell dated 9.5.2000 in respect of the land measuring 12 kanals 6 marlas.

On 9.5.2000, the defendant No.1 Surta Singh purported to execute an agreement to sell in favour of the plaintiff for sale of the land. The sale deed was to be executed on or before 15.12.2000. The plaintiff paid a sum of Rs.2,75,000/- as an earnest money and balance amount was to be paid on the date fixed for registration of the sale deed.

The defendant Nos.2 to 4 pleaded that they have purchased the suit property vide three separate sale deeds dated 16.1.2001, executed by Surta Singh, defendant No.1 and that they are the bonafide purchasers of the property.

Both the Courts below have recorded concurrent finding of fact that the sale deeds in favour of the appellants are after filing of the suit and hit by doctrine of lis pendens. It has further been found that defendant has failed to execute the sale deed in favour of the plaintiff on the fixed date, whereas plaintiff was ready and willing to perform his part of the contract.

Learned counsel for the appellants has vehemently argued that the sale deeds dated 16.1.2001 were executed on the basis of prior agreement of sale deed 16.1.1998. It is argued that no issue regarding the said agreement was framed by the Courts below and, therefore, the appellants have not led any evidence in respect of said document. However, I do not find any substance in the argument raised by the learned counsel for the appellants. Issue No.4 has been framed to the effect, "whether defendant Nos.2 to 4, present appellants, are the bonafide purchasers for consideration and without notice? OPD". The defendants have raised a specific pleading regarding prior agreement of sale dated 16.1.1998 in their written statement, but still no such agreement has been produced on record. Therefore, the argument that no specific issue regarding the agreement of sale dated 16.1.1998 was framed, is not sustainable. Admittedly, the sale in favour of the appellants is after the filing of the suit which was filed on 19.12.2000.

In view of the said fact, I do not find any illegality or irregularity in the findings recorded by the Courts below that the appellants cannot be said to be bonafide purchaser for a valuable consideration.

I do not find that any substantial question of law arises in the second appeal, for consideration of this Court as pure findings of fact recorded above are sought to be disputed.

Dismissed in limine.

**(HEMANT GUPTA)**
**JUDGE**

**September 22, 2006.**

**mohinder*